IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 82 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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CHAIRMAN & MANAGING DIRECTOR BANK OF INDIA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 82 of 2002

MR SV RAJU for Petitioner No. 1-2

MR PR ABICHANDANI, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

MR YOGESH S LAKHANI for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 04/09/2002

ORAL JUDGEMENT

The revision arises out of an order passed by the learned Chief Judicial Magistrate, Baroda, below Ex.22 in

Criminal Case No. 0/81 of 2000 (Annexure "E"), on 19.1.2002 in following terms:-

> "Summons to be issued to Chairman, Bank of India, Central Office, Mumbai with direction to provide the information as stated in para 3(a) to (4) through conversant officer, returnable on or before 16.2.2001."

2. The revisioners are the witnesses who were summoned to provide information by virtue of the said order. The grievance of the revisioners is that the information sought has no relevance whatsoever with the complaint of the original complainant - present respondent No.2. A summons was issued by the Magisterial Court earlier, which came to be challenged before this Court in Criminal Revision Application No. 473 of 2001, wherein the Court had passed an order on 3.12.2001 in the terms of agreement between the parties. The terms of agreement as quoted in the order can be reproduced thus:

> "The complainant agrees that the order dated 19th March, 2001 summoning petitioner No.1 be quashed and that if the complainant requires any information from the petitioner No.2 Bank through any conversant person in the inquiry or trial, he would move a separate application pointing out the relevancy to the learned Magistrate and the learned Magistrate would decide the same on merits and in accordance with law and if so required, the petitioner No.2 Bank will provide the relevant information through a conversant person."

It is contended that the details sought for in the application whereunder the impugned order is passed, is not relevant to the complaint and learned Magistrate has passed the order without considering the aspect of relevance. It is a routine, non-speaking and mechanical order. It is therefore urged that the said order may be quashed and set aside.

3. Learned Advocate Mr. S.V. Raju has submitted that the complaint by respondent No.2 is against in all 15 accused persons. Revisioner Bank or any officer thereof neither figure as accused, nor any allegations are made in the complaint against Bank or Bank officers. The complaint is for offences punishable under Sections 405, 406, 409, 418, 420, 34 and 114 of IPC. It is submitted that the Bank officer was summoned earlier and has been examined before the Court and on certain

statements made in the deposition now certain details regarding the name and address of Chairman, Executives, Officers, Directors etc. are sought for the relevant period during which the Bank entered into transaction with accused No.1 - Yuvraj Industries Ltd. It is urged that even according to the complainant, as stated in the application, it is revealed from the deposition of Patheja, Chief Manager of the Bank that there is violation of margin requirement, that there is easy diversion of funds to the Directors, that there is negligence in checking title of property before taking into mortgage and there is inaction on the part of the officers of the Bank and Chairman. It was urged that all these aspects have no relevance with the complaint of the complainant or the acts alleged therein against the accused persons and therefore the summons has wrongly been got issued by respondent No.2. The lower Court has not considered this aspect and has passed the impugned order. The order may therefore be quashed and set aside.

4. The revision is opposed to by learned Advocate Mr. Y.S. Lakhani, appearing for respondent No.2. According to him the summons is issued in an enquiry being conducted by the Court. The complainant was never aware about the action or inaction on the part of the officers, which has resulted into a big Bank scam of which the complainant is a victim, though indirectly. Mr. Lakhani submitted that the builders - the original accused persons have, after selling the flat to the complainant and others, mortgaged the same to the Bank and the Bank has, on the basis of some old title clearance report, sanctioned the loan. There are other irregularities also. Mr. Lakhani therefore submitted that there appears some connivance on the part of the officers of the Bank handling the account of the accused and hence this summons. The order is innocuous and this Court may not exercise it's revisional jurisdiction.

5. Learned APP Mr. Abichandani appears for the respondent No.1 - State of Gujarat.

6. Having regard to the contentions raised before this Court, it has to be noted that on lodging of complaint in question by respondent No.2, learned Magistrate ordered to hold an enquiry under Section 202 of Cr.P.C. During the course of enquiry, officer of the revisioner Bank was summoned. In his deposition he has stated that a communication was received from the complainant by the Bank and it was clarified therein that the properties were sold prior to the mortgage to the complianant and others. He admits that on reading the

letter he had realised that the property mortgaged to the Bank was not of the ownership of accused No.1 at the relevant time. He however stated that he was not monitoring the account. It transpires from his deposition that higher office has called for some explanation in this regard. He stated that in the project a margin amount of 74.25 per cent was to be raised and spent by the borrower i.e. accused No.1 and the rest of the amount totalling to about 2 million USD, equivalent to about Rs. 7.5 crores was loaned by the Bank and he has stated that this was done simultaneously. Be that as it may, what transpires is that the Bank has not followed it's norms. All that can be said is that those officers may be responsible therefor. But so far as present complaint against accused persons is concerned, that can have no relevance whether the title was properly checked or not, whether margin was maintained or not and therefore details of officers who allegedly committed lapses in observing Rules would also not be relevant in so far as this complaint is concerned. In absence of any allegation, nothing can be inferred against these officers qua the complainant, nor can anything be inferred in their favour. The fact remains that in a complaint against persons who are not either employees or representatives of the Bank the details of officers who were monitoring the Bank account of the accused and who are indicated to have committed administrative lapses cannot be relevant to the complaint in question. The complaint is a private complaint and the enquiry is being conducted by the Court in respect of that complaint only wherein no allegations are made against the Bank or Bank officers handling the account of the accused persons. These aspects have not been considered by the Court below, although it was expected of it in light of an order passed by this Court in Criminal Revision Application No. 473 of 2001 on 3.12.2001. The order therefore cannot be permitted to stand. Revision deserves acceptance. The same is accepted. Order passed by the Chief Judicial Magistrate, Vadodara in Criminal Case No. 0/81/2000 dated 19.1.2002 is hereby quashed and set aside. Rule made absolute.

Whatever is observed above by this Court is only while considering the question of relevancy of the details sought qua the complaint and may not be taken as conclusive observations in respect of conduct of the Bank or Bank officers.

(A.L.Dave, J.)

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